

Precot Mills Ltd., K-unit Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Dec-08-2004

Reported in : (2005)(183)ELT407Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Precot Mills Ltd., K-unit

Respondent : Cce

Judgement :

1. This is an appeal against the Order-in-Original No 1/2004 dated 16.1.2004 passed by the Commissioner of Customs & Central Excise, Bangalore-I Commissionerate, Bangalore.

2. The appellants are manufactures of Poly (dyed) yarn, an excisable commodity. They manufactured initially single yarn and cleared the same to their sister init for doubling after payment of appropriate duty.

The doubled yarn was cleared at nil rate of duty, vide Notification No.6/2002 dated 1.3.2002, Sl. No. 94 and condition No 16. There is no dispute on this point. The doubled yarn is returned to their factory for dyeing. The dyed yarn is cleared on payment of duty @ Rs. 2.50 per Kg by availing the same exemption Notification No 6/2002 dated 1.3.2002, vide Sl No. 97 read with condition 19 of the Notification.

The extract of Sl. No. 97 and condition 19 is given below - 97 51.06, Dyed, printed, bleached Rs. 2.50 - 19 51.07, or mercerized yarn (con per Kg.

(ii) on which the appropriate duty of excise under the First schedule, the special duty of excise leviable under the Second Schedule, or as the case may be, the additional duty leviable under the Customs Tariff Act, 1975 has already been paid; and (iii) no credit under rule 3 of rule 11 of the CENVAT Credit Rule 2002 has been availed in the process of dyeing, printing, bleaching or mercerizing in the manufacture of dyed, printed, bleached or mercerized yarn." In the appeal proceedings, the issue is the interpretation of the condition 19 (ii) given above. In order to avail the exemption under Sl. No. 97, the dyed yarn must have been manufactured out of yarn on which the appropriate duty of excise under the First Schedule, the special duty of excise leviable under the Second Schedule, or as the case may be, the additional duty leviable under the Customs Tariff Act, 1975 should have been already paid. According to the Revenue, when the doubled yarn is cleared, it is cleared at nil rate of duty. Hence, the condition 19 (ii) is not fulfilled. As the condition 19 (ii) is not fulfilled, the dyed yarn is not entitled for exemption under Sl. No 97 in Notification No 6/2002 dated 1.3.2002. Therefore, the appellant is liable to pay differential duty. The appellants contend that when the single yarn is manufactured in their factory and cleared, the duty was paid. Only at the doubling stage, exemption under Sl. No. 94 was availed. The fact remain that at the single yarn stage, the duty has been discharged. Hence, the dyed yarn is actually manufactured out of yarn on which appropriate duty of excise has already been paid. They are legally entitled for the exemption.

2. S/Shri T.R. Sastry, M.S. Nagaraj and V.K.S. Iyer, learned Advocates appeared on behalf of the appellants. Smt. Shoba L. Chary, learned JCDR appeared on behalf of the Revenue.

3. The Revenue contended that as per Note 2 to the Chapter 55 of the Central Excise Tariff Act, 1985, the process of doubling amounts to manufacture. The single yarn and doubled yarn are distinct commodities.

Since the appellants availed exemption and did not pay any duty on the doubled yarn which was cleared for dyeing, the appellants are debarred from availing the

exemption Sl. No. 97 in respect of the dyed yarn. The Revenue emphasised the point that the condition 19 is not satisfied as the dyed yarn was manufactured out of doubled yarn on which no duty was paid in view of the availing of exemption under Sl. No. 94 of the Notification.

4. The learned Advocate submitted that the Section Notes and Chapter Notes are required to be referred to only for the purpose of interpreting the Central Excise Tariff Act and not the purpose of interpreting the beneficial Notification. The exemption Notification has to be interpreted according to the plain words and language of the Notification and not with reference to Section Notes of Chapter Notes or Interpretive Rules. The appellants relied on Para 24 of the decision in the case of CCE v. Coats Viyella (India) Ltd. - 2002 (128) ELT 234 (T) They further contended that language of the Notification in terms of Sl. No. 94 and 97 and condition No. 16 and No 19 would make it clear that once the duty has been paid on the single yarn, appropriate duty has been paid on the yarn, which is subject to further process.

5. The Revenue relied on the decisions of the Apex Court in the case of CCE Vadodara v. Dhiren Chemical Industries (2002 (139) ELT 3 (S.C.) and maintained that the doubled yarn did not suffer any duty and hence, the benefit of Notification No 6/2002 under Sl. No. 97 will not be applicable to the dyed yarn which is converted from doubled yarn. While giving comments on the appeal, the Revenue has observed that the appellants contention that if the duty is paid at the doubling stage, they would be eligible for the CENVAT Credit of the same at the dyeing stage and in effect, it would be revenue neutral appears to be correct.

6. We have carefully considered the rival contentions. The point to be decided in this case is whether the appellant is entitled to claim exemption under Sl. No 97 in respect of the dyed yarn manufactured out of the doubled yarn which availed complete exemption from duty. The decision on this point involves the interpretation of the following expression used in condition 19 (ii) of the Notification No. 6/2002 :- "If manufactured out of yarn on which appropriate duty of excise has already been paid.

It is true that the dyed yarn was manufactured out of the doubled yarn on which no duty was paid. But it is also true that the dyed yarn was manufactured out of doubled yarn, manufactured out of single yarn on which duty had already been paid. Hence, if a question is asked whether the dyed yarn is manufactured out of the duty paid yarn, answer would be `YES'. The dyed yarn was manufactured out of single yarn on which duty was paid even though at the doubling stage, exemption was availed.

There is no condition that the yarn should have suffered duty at every stage. In other words there is no condition that if doubled yarn is subject to the process of dyeing, the dyed yarn is entitled for exemption only if at the doubling stage duty had been discharged.

Moreover, the appellants contended that even if the duty is paid at the doubling stage, CENVAT credit can be availed for clearance of dyed yarn and in effect there would be revenue neutrality. In these circumstances, the appellant's interpretation of condition 19 (ii) appears to be correct. In view of these observations, we allow the appeal with consequential relief.

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